

STATE OF WASHINGTON**OFFICE OF
INSURANCE COMMISSIONER****BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF WASHINGTON**

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In the Matter of)	No. D 99 - 95
)	
MARK VAN WINKLE)	FINDINGS OF FACTS, CONCLUSIONS
)	OF LAW AND ORDER ON
Licensee.)	HEARING

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Pursuant to RCW 34.05, 48.04.0 10 and WAC 10-08 and after notice to all interested parties and persons, the above-entitled matter came on regularly for hearing before the Insurance

Commissioner for the state of Washington on November 10, 1999. Pursuant to Chapter 34 RCW, all persons to be affected by the above-entitled matter were given the right to be present at such hearing during the giving of testimony, and had reasonable opportunity to inspect all documentary evidence. Mark C. Van Winkle was represented by Gina M. Bissell, Esq., of Morgan Hill, P.C. The Insurance Commissioner was represented by Assistant Attorney General Michael E. Grant.

Pursuant to RCW 34.05.461(3), the parties are advised that they may seek reconsideration of this order by filing a request for reconsideration under RCW 34.05.470 with the undersigned within 10 days of the date of service of this order. Further, the parties are advised that, pursuant to RCW 34.05.514 and 34.05.542 this order may be appealed to Superior Court by filing a petition in the Superior Court, at the petitioner's option, for (a) Thurston County or (b) the county of the petitioner's residence or principal place of business within 30 days of service of this order. For further information or to obtain copies of the applicable statutes the parties may contact the administrative assistant to the undersigned.

NATURE OF PROCEEDING

The purpose of the hearing was to take testimony and evidence and hear arguments as to whether the Insurance Commissioner's Order No. D 99-95 should be confirmed, set aside, or modified. Order No. D 99-95 ordered that the insurance agent's license of Mark C. Van Winkle should be revoked, for reasons specified therein.

FINDINGS OF FACTS

Having considered the evidence and argument presented at the hearing, and the documents on file herein, the presiding officer designated to hear and determine this matter finds as follows:

1. The hearing was duly and properly convened and all substantive and procedural requirements under the laws of the state of Washington have been satisfied.
2. Mark C. Van Winkle ("Licensee") is a 42 year old individual who has held an insurance agent's license in the state of Washington for approximately 15 years. His business office is located in Medical Lake, Washington.
3. The Licensee is a captive agent of Farmers Insurance Group and, as such, he must place all insurance business with Farmers; he may only place business with another company if it has not been possible to place the business with Farmers. Relative to premium funds received for Farmers business, the Licensee maintains a separate Farmers premium account from which he cannot withdraw funds; the Licensee is expected to deposit those premium funds generally by the next business day after receipt. From there, the funds are electronically swept into Farmers' own corporate account and Farmers pays the Licensee his commissions on a monthly basis. The evidence showed, and it is here found, that the separate premium account related to Farmers' premium funds is very well regulated by Farmers and there was no evidence that there had been any problems with that account.
4. In her Order Revoking License, the Insurance Commissioner ("Commissioner") alleges that the Licensee failed to account for and maintain premium funds in a separate premium account. Specifically, the Commissioner alleges that the Licensee did have such a separate premium account but did not account for premiums adequately and failed to maintain records of the separate account. In fact, while the Commissioner conducted an audit of the Licensee's records in 1993 which showed that he had maintained good records and conducted his insurance business without problems, since 1993 the Licensee has indeed failed to maintain accurate records of his separate premium account which relates to non-Farmers Insurance Group premium funds.
5. In her Order Revoking License, the Commissioner alleges that the Licensee failed to remit

money to the customers entitled thereto, in the cases involving Pam Stratton, Laurence Jones, Vernon Weston and Steve Crawford. In fact, and as was been generally conceded by the Licensee, he did fail to remit money to customers Pam Stratton, Laurence Jones, Vernon Weston and Steve Crawford. The weight of the evidence showed that these failures related principally to the Licensee's failure to maintain adequate and legible records of his non-Farmers separate premium account. None of these failures related to Farmers Insurance Group business.

6. In her Order Revoking License, the Commissioner alleges that, in the cases of George Johnson, Gary Johnson and Stanley, the Licensee received money intended to be used as premium but did not remit that money to an insurer or back to these customers. In fact, and as was generally conceded by the Licensee, he did receive money intended to be used as premium but did not remit that money to an insurer or back to these customers. The weight of the evidence showed that these failures related principally to the Licensee's failure to maintain adequate and legible records of his non-Farmers separate premium account. None of these failures related to Farmers Insurance Group business.
7. In her Order Revoking License, the Commissioner alleges that there were at least six instances where a deposit was made to the Licensee's premium account but no customer was identified. In fact, and as was generally conceded by the Licensee, there were at least six instances where a deposit was made to the Licensee's premium account but no customer was identified. These instances all related to non-Farmers Insurance Group business and therefore the failure to identify the deposits were all in the Licensee's non-Farmers Insurance Group separate premium account.
8. In her Order Revoking License, the Commissioner alleges that in the cases of TJ Builders, Modern Steel Buildings, Mark Thompson Finishes, Energy Control, A&R Mobile Home Set Up, and Aguanto, the Licensee received money intended as premium and the Licensee arranged the insurance or bond with Contractors Bonding and Insurance Company but did not remit the premium that had been paid to him by the customers. In fact, and as was generally conceded by the Licensee, in the cases of TJ Builders, Modern Steel Buildings, Mark Thompson Finishes, Energy Control, A&R Mobile Home Set Up, and Aguanto, the Licensee did indeed receive money intended as premium, and arranged for the insurance or bond with Contractors Bonding and Insurance Company but did not remit the premium that had been paid to him by the customers. That carrier terminated the Licensee's appointment to represent it as an insurance agent.
9. In her Order Revoking License, the Commissioner alleges that the Licensee received an inquiry from the Commissioner relative to the business of insurance, namely a demand for an adequate reconciliation and balancing of the separate premium account. The Commissioner alleges that her request was made several times, including by a letter of May 24, 1999, but that no such reconciliation was received and that therefore the Licensee failed to respond promptly in writing to an inquiry of the Commissioner. In fact, the Licensee did fail to respond adequately in writing to an inquiry of the Commissioner in that, when he was asked on or about the beginning of the Commissioner's audit on March 2, 1999 for a reconciliation of his non-Farmers separate premium account, he provided the Commissioner with reconciliations on March 26, 1999, March 31, 1999 and April 8, 1999 (Exs. 10, 11 and 12) but in each case they were determined by the Commissioner to be inadequate.
10. It appears from the testimony, and there being no evidence to the contrary, that those accounts where insurance customers were owed money, or whose insurance carriers were owed money, have been settled appropriately.
11. The testimony showed, and there being no evidence presented to the contrary, that the many problems which the Licensee created concerning these various above identified accounts and customers were due to very incompetent recordkeeping rather than due to an intent on the Licensee's part to commit these wrongs.

12. In her Order Revoking License, the Commissioner asserts that by the above activities the Licensee has shown himself to be incompetent or untrustworthy or a source of injury and loss to the public. In fact, the actions of the Licensee were primarily related to his inability, since 1993, to keep accurate records of his non-Farmers separate premium account. While the Licensee presented evidence of his agency relocation and severe family problems, this does not change the fact that in failing to maintain such accurate records of his non-Farmers separate premium account, he Licensee did show himself to be incompetent.
13. Of great significance in this matter, Farmers Insurance Group is very supportive of the Licensee continuing to represent it. As was presented in the testimony of Brian Biggs, the Licensee's Farmers District Manager who supervises him - and there being no evidence to the contrary - Farmers views the Licensee as a "good, solid, agent" as well as a productive one. Farmers views the Licensee as the most computer proficient agent in his district and sees significant potential in the future for the Licensee as a Farmers insurance agent. Farmers has testified that it will be reviewing the Licensee's records, is working with the Licensee to install a new computer system with efficient software and will be continuing the tight controls over collection and remission of premium funds as, apparently, it does with all of its agents. Farmers knows of the revocation of the Licensee's insurance agent's license and the reasons therefore, and would like the Licensee to be able to continue to represent Farmers as an insurance agent. Although most or all other Farmers agent represent other insurance carriers, Farmers is willing to accept the Licensee in a capacity where he would only be allowed to represent Farmers and no other carriers.
14. No evidence was presented that there had ever been any problems with any Farmers premium or customers.
15. Witnesses appearing for the Commissioner included Mary Selvig, an insurance examiner with the Office of the Insurance Commissioner (in person) and Brian Biggs, District Manager for Farmers Insurance Group (by telephone). Both witnesses presented their testimony in a clear and credible manner with no apparent biases.
16. Witnesses for the Licensee included Brian Biggs, District Manager for Farmers Insurance Group (by telephone) and himself Mr. Biggs presented his testimony in a clear and credible manner with no apparent biases. The Licensee presented his testimony in a clear and credible manner.
17. Given all of the facts as set forth above, it is reasonable that the Insurance Commissioner's Order Revoking License, No. D 99-95 should be revised follows: 1) In lieu of revocation of his insurance agent's license, his insurance agent's license should be limited to allow the Licensee and his agency only to represent Farmers Insurance Group. 2) The Commissioner may, in her discretion, conduct audits at the Licensee's expense over the next five years as often as she deems necessary including requiring the Licensee to verify for the Commissioner that all customers and carriers who are entitled to money have been paid and that no consumers has been harmed. After the five year period, the Commissioner shall maintain her statutory right to audit this Licensee and his agency at any time and the expenses shall be allotted as set forth by law. 3) Finally, the facts herein shall be considered in any future disciplinary proceeding against this Licensee.

CONCLUSIONS OF LAW

1. While the Licensee did have a separate non-Farmers premium account, he failed to maintain adequate records of these funds in this account and thereby violated RCW 48.17.600 and WAC 284-12-080.
2. In the cases of Pam Stratton, Laurence Jones, Vernon Weston, and Steve Crawford, all non-Farmers customers, the Licensee failed to remit money to these persons who were entitled thereto, and -thereby in each case violated RCW 48.17.480.

3. In the cases of George Johnson, Gary Johnson, and Stanley, all non-Farmers customers, the Licensee received money intended to be used as premium but did not remit that money to an insurer or back to the customers as required, and thereby violated RCW 48.17.480.
4. In six instances, the Licensee deposited funds into his non-Farmers separate premium account but failed to identify the customers to which they related, and thereby violated RCW 48.17.480.
5. In six cases (TJ Builders; Modern Steel Buildings; Mark Thompson Finishes; Energy Control; A&R Mobile Home Set Up; and Aguanto), the Licensee received money intended as premium and arranged the insurance or bond with Contractors Bonding and Insurance Company, but he did not remit the premium that had been paid to him by the customers, in violation of RCW 48.17.480.
6. Given the facts found above, it cannot be concluded that the Licensee failed to respond promptly in writing to an inquiry of the Commissioner relative to the business of insurance in violation of RCW 48.17.475.
7. Given the totality of the facts found above, and particularly the uncontested evidence that the violations which occurred has solely or primarily to do with incompetent recordkeeping, it cannot be concluded that the Licensee willfully violated, or knowingly participated in the violation of the Insurance Code or proper orders or regulations of the Commissioner within the meaning of RCW 48.17.530(l)(b).
8. By his activities as found in the above Findings of Facts, the Licensee has demonstrated that, as to his non-Farmers insurance business, he has shown himself to be incompetent as to his recordkeeping and maintenance of non-Farmers separate premium account funds, within the meaning of RCW 48.17.530(l)(h).
9. Pursuant to RCW 48.17.530(l)(h), the Insurance Commissioner's Order That License Not Be Renewed Reinstated Or Issued, No. D 99-95, should be revised as follows: 1. In lieu of revocation of his entire insurance agent's license, the Licensee's insurance agent's license should be limited to allow the Licensee and his agency only to represent Farmers Insurance Group; 2. The Commissioner may, in her discretion, conduct audits at the Licensee's expense over the next five years as often as she deems necessary including requiring the Licensee to verify for the Commissioner that all customers and carriers who are entitled to money have been paid and that no consumers have been harmed. After the five year period, the Commissioner shall maintain her statutory right to audit this Licensee and his agency at any time but the expenses shall be allotted as set forth by law; 3. The facts herein shall be considered in any future disciplinary proceeding against this Licensee.

ORDER

On the basis of the foregoing Findings of Facts and Conclusions of Law, to the effect that the Licensee, Mark C. Van Winkle, 1) has violated WAC 284-12-080; 2) has violated RCW 48.17.480 and 3) has demonstrated himself to, and been so deemed by the Commissioner to be, incompetent as to his recordkeeping and maintenance of his non-Farmers separate premium account as contemplated by RCW 48.17.530(1)(h); and to the effect that Order No. D 99- 95 should be revised,

IT IS HEREBY ORDERED that the Insurance Commissioner's Order that the insurance agent's license of Mark C. Van Winkle should be revised as follows: 1. In lieu of revocation of his entire insurance agent's license, the Licensee's insurance agent's license should be limited to allow the Licensee and his agency only to represent Farmers Insurance Group; 2. The Commissioner may, in her discretion, conduct audits at the Licensee's expense over the next five years as often as she deems necessary including requiring the Licensee to verify for the Commissioner that all customers and carriers who are entitled to money have been paid and that no consumers have been harmed. After the five year period, the Commissioner shall maintain her statutory right to audit this Licensee and his agency at any time but the expenses shall be allotted as set forth by law; 3. The facts herein

shall be considered in any future disciplinary proceeding against this Licensee.

This Order is entered pursuant to RCW 34.05, WAC 10-08-210, RCW 48.04.010, RCW 48.17.530 and RCW 48.17.540.

This Order is entered at Olympia, Washington, this 10th day of February, 2000 and is effective February 25, 2000.

DEBORAH SENN
Insurance Commissioner

By

PATRICIA D. PETERSEN
Chief Hearing Officer and Presiding Officer